

PROB 12B
(08/16)

March 18, 2022
pacts id: 233336

**UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA**

Request for Modifying the Conditions or Term of Supervision
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: Jeffrey Lee McDaniel (English)

Dkt No.: 10CR02047-001-W

Name of Sentencing Judicial Officer: The Honorable Thomas J. Whelan, Senior U.S. District Judge

Sentence: 63 months' custody; 7 years' supervised release. (*Special Conditions: Refer to Judgment and Commitment Order.*)

Date of Sentence: April 4, 2011

Date Supervised Release Commenced: December 24, 2015

Modification: December 1, 2015, Your Honor added a non-punitive RRC placement.

March 8, 2016, Your Honor added a mental health treatment condition.

March 24, 2016, Your Honor updated the sex offender treatment condition and added an additional non-punitive RRC placement.

July 7, 2016, Your Honor added a non-punitive RRC placement.

January 27, 2017, Your Honor added a location monitoring condition.

Prior Violation History: None.

PETITIONING THE COURT

TO MODIFY THE CONDITIONS OF SUPERVISION AS FOLLOWS:

TO REMIT:

Submit your person, property, house, residence, vehicle, papers, computer, electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18U.S.C.3563 (b)(23) ; 3583(d)(3)

Not use or possess devices which can communicate data via modem or dedicated connection and may not have access to the Internet without prior approval from the court or the probation officer. The offender shall consent to the installation of systems that will enable the probation officer to monitor computer use on any computer owned or controlled by the offender. The offender shall pay for the cost of installation of the computer software.

Not possess any materials such as videos, magazines, photographs, computer images or other matter that depicts "sexually explicit conduct" involving children and/or adults, as defined by 18 U.S.C.2256 (2) ; and not patronize any place where such materials or entertainment are available.

Not have unsupervised contact with any child under the age of 18, unless in the presence of a supervising adult (who is aware of the defendant's deviant sexual behavior and conviction), and with the prior approval of the probation officer.

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Not associate with, or have any contact with any sex offenders unless in an approved treatment and/or counseling setting.

TO ADD:

Submit your person, property, residence, abode, vehicle, papers, computer, social media accounts, any other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18 U.S.C. § 3563 (b)(23); 3583 (d)(3). Failure to submit to a search may be grounds for revocation; you must warn any other residents that the premises may be subject to searches pursuant to this condition.

Not use or possess any computer, computer-related devices (pursuant to 18 U.S.C. § 1030(e)(1)), which can communicate data via modem, dedicated connections or cellular networks, and their peripheral equipment, without prior approval by the court or probation officer, all of which are subject to search and seizure. The offender must consent to installation of monitoring software and/or hardware on any computer or computer-related devices owned or controlled by the offender that will enable the probation officer to monitor all computer use and cellular data. The offender must pay for the cost of installation of the computer software.

Not possess or view any materials such as videos, magazines, photographs, computer images or other matter that depicts "sexually explicit conduct" involving children as defined by 18 USC § 2256(2) and/or "actual sexually explicit conduct" involving adults as defined by 18 USC § 2257(h)(1), and not patronize any place where such materials or entertainment are the primary material or entertainment available.

Not initiate any contact (personal, electronic or otherwise) or associate with anyone under the age of 18, unless in the presence of a supervising adult who is aware of the offender's deviant sexual behavior and nature of offense and conviction, with the exception of the offender's biological children, unless approved in advance by the probation officer.

Not associate with, or have any contact with, any known sex offenders unless in an approved treatment and/or counseling setting.

Not loiter within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places primarily frequented by persons under the age of 18, without prior approval of the probation officer.

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CAUSE

Due to changes in case law, statute, and technology, the common language used by this court for the special conditions of release has changed since Mr. McDaniel's sentencing. Probation seeks to update the language to provide the best opportunity for rehabilitation and provide the best tools for supervision. Specifically, the above modifications are recommended and request: the search condition is being updated to comply with the Adam Walsh Act; the computer monitoring condition is being updated to include use of cellular data, which is now common place, and to provide a statutory definition of the term "computer"; the condition controlling access to sexually explicit material is for compliance with *U.S. v Gnirke*; the condition controlling minor contact / association is being updated to comply with *U.S. v Wolf Child*; the condition controlling sex offender association is being updated to comply with *U.S. v Vega*; and the condition controlling access to certain places clarifies those places must be those primarily frequented by minors. The proposed changes were reviewed with Mr. McDaniel, who is amenable to the changes as evidenced by this signature on the attached Probation Form 49, Waiver of Hearing. ✓

Additionally, the following is being reported as noncompliance: on March 3, 2022, Mr. McDaniel admitted to the undersigned and his sex offender counselor, he purchased, possessed, and viewed a magazine and DVD containing actual sexually explicit material. He stated he purchased the material from an adult store in the Midway District of San Diego and used the material for masturbatory purposes over the course of several months. He stated he threw the material away sometime in February 2022, because he was bored with the material. He cited some recent depression as the cause of his relapse. Mr. McDaniel had been untruthful with both the undersigned and his sex offender therapist as he had been given numerous opportunities to admit to viewing pornographic material and instead chose to be dishonest. Finally, while not being reported as noncompliance, it is noted that Mr. McDaniel procured a storage unit and did not disclose his possession of the unit to Probation. A cursory search of the unit, once it was discovered, revealed no violation material. However, it does lend to the narrative of Mr. McDaniel being less than forthright with Probation.

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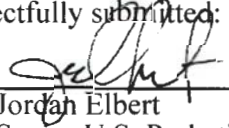
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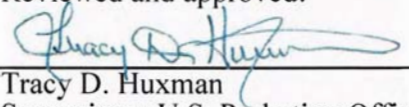
Probation believes the above noted modifications will provide the basic tools necessary to continue to supervise Mr. McDaniel in the community. If Your Honor concurs, the violation behavior will be addressed by returning Mr. McDaniel to a more intensive phase of sex offender treatment, include a self-help component of Mr. McDaniel's choosing, such as sex addictions anonymous, and by having him re-enroll in an outpatient mental health program. Additionally, Probation will also make more frequent contact with Mr. McDaniel in the community.

Respectfully submitted:

by


 Jordan Elbert
 Senior U.S. Probation Officer
 (619) 409-5128

Reviewed and approved:

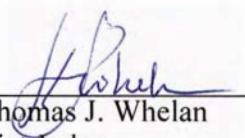

 Tracy D. Huxman
 Supervisory U.S. Probation Officer

Attachments:

THE COURT ORDERS:

☒ THE MODIFICATION OF CONDITIONS AS NOTED ABOVE

☐ OTHER _____


 The Honorable Thomas J. Whelan
 Senior U.S. District Judge

Date

5/24/22

jt